STATUTORY INSTRUMENTS

SI 344 of 2005

R E G U L A T I O N S

entitled

European Communities (Customs Action against Goods Suspected of Infringing certain Intellectual Property Rights) Regulations 2005

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I, Brian Cowen, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purposes of giving full effect to Council Regulation (EC) No. 1383/2003 of 22 July 2003[1] and Commission Regulation (EC) No. 1891/2004 of 21 October 2004[2], hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Customs Action against Goods suspected of Infringing certain Intellectual Property Rights) Regulations 2005.

2. (1) In these Regulations -

"Council Regulation" means Council Regulation (EC) No. 1383/2003 of 22 July 2003[1];

"Commission Regulation" means Commission Regulation (EC) No. 1891/2004 of 21 October 2004[2].

(2) A word or expression which is used in these Regulations and which is also used in the Council Regulation or in the Commission Regulation has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Council Regulation or in the Commission Regulation, as the case may be.

[1] O.J. No. L196, 02.08.2003, p.7
[2] O.J. No. L328, 30.10.2004, p.16

(3) In these Regulations -

(a) a reference to a Regulation is a reference to a Regulation of these Regulations, and

(b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs,

unless otherwise indicated.

3. For the purposes of the Council Regulation and the Commission Regulation the Revenue Commissioners are designated as the competent customs authority to receive and process applications.

4. (1) An application, in either written or electronic form, to the Revenue Commissioners by a right holder for action in respect of goods suspected of infringing property rights shall be in accordance with Articles 5 and 6 of the Council Regulation.

(2) A person who gives, in an application for action, details which he or she knows are false or misleading is guilty of an offence.

5. A person who makes a false declaration for the purpose of Article 9 of the Council Regulation is guilty of an offence.

6. (1) A person who contravenes Article 16 of the Council Regulation is guilty of an offence.

(2) A person who aids or abets the commission of an offence contrary to paragraph (1) is guilty of an offence.

7. (1) Goods, infringing an intellectual property right, which correspond to the description of goods contained in an application for action granted by the Revenue Commissioners under Article 5(7) of the Council Regulation and which in the case of counterfeit goods bear a trade mark identical to or substantially indistinguishable from the registered trade mark mentioned in that application shall not be released for free circulation,

export, re-export or placing under a suspensive procedure during the period specified by the Revenue Commissioners.

(2) Goods infringing an intellectual property right which are prohibited from being released for free circulation, exported, re-exported or entered for a suspensive procedure under paragraph (1) are deemed to be so prohibited for the purposes of sections 42, 178, 202, 207 and 208 of the Customs Consolidation Act 1876 (39 and 40 Vict., c.36) sections 3 and 5 of the Customs Act 1956 (No. 7 of 1956) and sections 6, 7 and 9 of the Customs and Excise (Miscellaneous Provisions) Act 1988 (No. 10 of 1988).

8. The Revenue Commissioners may take such measures as they consider necessary in respect of goods found to infringe an intellectual property right in accordance with Article 17 of the Council Regulation.

9. A person guilty of an offence under these Regulations is liable, on summary conviction, to a fine not exceeding €5,000.

10. Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or any other person who was acting or purporting to act in any such capacity, that person, as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first mentioned offence.

11. The Probation of Offenders Act 1907 (7 Edw. 7., c.17) does not apply to an offence under these Regulations.

12. These Regulations shall be construed together with the Customs Acts.

13. The European Communities (Customs Action against Goods Suspected of Infringing Certain Intellectual Property Rights) Regulations 2004 (S.I. No. 181 of 2005) are revoked.

Given under my official seal,

This 6th day of July 2005

L.S.

Brian Cowen
Minister for Finance.

EXPLANATORY NOTE

(This is not part of the instrument and does not purport to be a legal interpretation.)

The purpose of these Regulations are to implement Council Regulation 1383/2003 and Commission Regulation 1891/2004 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

These Regulations designate the Revenue Commissioners as the competent customs authority to receive and process applications for action in respect of infringements. They also create offences and provide for related penalties.